

Message Text

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PAGE 01 STATE 152847
ORIGIN EB-08

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FM SECSTATE WASHDC
TO AMEMBASSY PARIS IMMEDIATE
INFO AMEMBASSY BONN
AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: EAIR, FR

SUBJECT: CIVAIR: PAN AM CHANGE OF GAUGE

1. DEPARTMENT HAS BEEN CONSIDERING WAYS IN WHICH US-FRENCH AVIATION CONFRONTATION MIGHT BE AVOIDED. PART 213 ACTION WILL BE EFFECTIVE JULY 12 UNLESS SOME ACCOMMODATION CAN BE REACHED. US PROPOSED SIX WEEKS AGO THAT MATTER BE SUBMITTED TO ARBITRATION, BUT FRENCH SEEM UNENTHUSIASTIC. THEY HAVE INDICATED AGREEMENT IN PRINCIPLE WITH ARBITRATION, BUT CRITICAL ISSUE APPEARS TO BE WHAT WILL HAPPEN PENDING AN ARBITRAL DECISION. FRENCH THINK PAN AM SHOULD REMAIN BARRED FROM CHANGE-OF-GAUGE OPERATION, WHILE US
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PAGE 02 STATE 152847

HAS STATED IT CANNOT STAND BY WHILE ITS AIRLINE IS BEING DENIED WHAT WE FIRMLY BELIEVE ARE OUR BILATERAL RIGHTS.

2. IN EFFORT TO BREAK LOGJAM, DEPARTMENT PROPOSES THAT FOLLOWING COMPROMISE BE RAISED INFORMALLY WITH FRENCH. DEP ASST SEC ATWOOD IS MEETING AFTERNOON OF JUNE 16 WITH COUNSEL (ECON) CHENU OF FRENCH EMBASSY TO DO SO, AND IT IS

SUGGESTED THAT PARIS EMBASSY DISCUSS SAME APPROACH WITH OFFICIALS IN PARIS.

3. PAN AM HAS BEEN DENIED OPERATING RIGHTS SINCE MAY 1, APPROXIMATELY SIX WEEKS. US IS CONVINCED THAT ARBITRATION

CAN BE COMPLETED IN THREE MONTHS, OR TWELVE WEEKS. (IN LIGHT OF FRENCH DELAY IN RESPONDING TO US ARBITRATION PROPOSAL, PROCESS MIGHT BE SHORTER. PRESUMABLY BOTH SIDES CAN NOW PUT THEIR LEGAL POSITIONS TOGETHER IN VERY SHORT TIME. ONLY SUBSTANTIAL DELAY IS LIKELY TO BE IN FORMING ARBITRATION PANEL.) THIS MEANS TOTAL PROCESS SHOULD TAKE EIGHTEEN WEEKS.

4. AN EQUITABLE SOLUTION WOULD BE TO SPLIT THE DIFFERENCE, SUCH THAT PAN AM WOULD BE ALLOWED CHANGE-OF-GAUGE OPERATION FOR NINE OF THE EIGHTEEN WEEKS AND DENIED THE OPERATION FOR NINE WEEKS. THIS CAN BE ACCOMPLISHED BY FRENCH ALLOWING PAN AM OPERATION EFFECTIVE, SAY, JULY 8. APPROVAL WOULD, OF COURSE, BE WITHOUT PREJUDICE TO FRENCH POSITION IN ARBITRATION AND COULD BE WITHDRAWN IF ARBITRAL DECISION FAVORED FRANCE. AS A RESULT, DURING THE EIGHTEEN-WEEK PERIOD OF DISPUTE, PAN AM OPERATION WOULD BE ALLOWED FOR HALF OF THE TIME AND DISALLOWED FOR THE OTHER HALF. CAB WOULD BE PREPARED TO WITHDRAW PART 213 ACTION UNDER THESE CIRCUMSTANCES.
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PAGE 03 STATE 152847

5. THE ABOVE ARRANGEMENT HAS THE FOLLOWING ADVANTAGES:

-- A. PARTIES WOULD PROCEED TO ARBITRATE DISPUTE ON AN EXPEDITED BASIS, THUS ALLOWING FOR AN AMICABLE RESOLUTION.

-- B. NO COUNTERMEASURES WOULD BE TAKEN AGAINST AIR FRANCE.

-- C. NEITHER SIDE WOULD BE VIEWED AS HAVING COMPROMISED ITS POSITION, SINCE THERE WOULD BE AGREEMENT ON ALLOWING OPERATION FOR HALF OF THE TIME IN DISPUTE.

6. IF FRENCH ARE IN FACT OPPOSED TO ARBITRATION, THE ABOVE ARRANGEMENT WILL NOT SATISFY THEM. BUT BY PROPOSING IT NOW, EVEN PRIOR TO RECEIVING RESPONSE TO JUNE 7 AIDE MEMOIRE, US IS SHOWING ITS GENUINE DESIRE TO REACH A FAIR ACCOMMODATION AND AVOID A CONFRONTATION.

7. US STANDS READY TO NEGOTIATE ARBITRATION COMPROMIS ON IMMEDIATE BASIS. DRAFT COMPROMIS WAS LEFT WITH FRENCH DELEGATION OF LEGAL EXPERTS ON JUNE 2. CHRISTOPHER

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